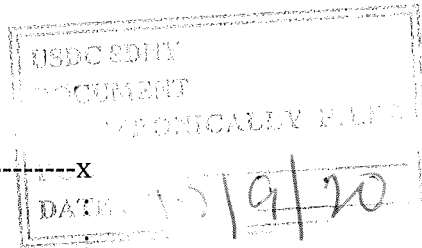


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JOSE ROSALIO MENDEZ, individually and
on behalf of others similarly situated,
Plaintiff,

v.

303 RESTAURANT LLC; HOVORKA
HOSPITALITIES PIERMONT LLC, d/b/a/ The
Whiskey Kitchen; and HENRY HOVORKA,
Defendants.

**ORDER AND DEFAULT
JUDGMENT**

20 CV 3103 (VB)

Plaintiff commenced this action on April 17, 2020, (Doc. #1), and on May 6, 2020, summonses were issued as to each defendant (Docs. ##9–11).

On May 14, 2020, plaintiff filed affidavits of service as to defendants 303 Restaurant LLC (“303 Restaurant”) and Hovorka Hospitalities Piermont LLC (“Hovorka Hospitalities”), stating 303 Restaurant and Hovorka Hospitalities were served on May 11, 2020. (Docs. ##12–13). 303 Restaurant and Hovorka Hospitalities’s deadline to answer, move, or otherwise respond to the complaint was thus June 1, 2020. See Fed. R. Civ. P. 12(a). Defendants 303 Restaurant and Hovorka Hospitalities failed to answer, move, or otherwise respond to the complaint or to seek an extension of time in which to do so, by June 1, 2020.

On May 27, 2020, plaintiff filed an affidavit of service as to defendant Henry Hovorka (“Hovorka”), stating Hovorka was served on May 1, 2020. (Doc. #14). This affidavit was signed and sworn to on May 5, 2020. Both of these dates are prior to the issuance of the summons on May 6, 2020. Accordingly, Defendant Hovorka was not properly served. In addition, defendant Hovorka failed to answer, move, or otherwise respond to the complaint or seek an extension of time in which to do so.

Plaintiff obtained certificates of default as to each defendant on June 24, 2020. (Docs. ##19–21). On July 20, 2020, plaintiff moved for an entry of default judgment against defendants.

(Doc. #23). On August 24, 2020, and October 8, 2020, the Court held an on-the-record show cause hearing on plaintiff's motion, at which plaintiff's counsel appeared, and no defendant appeared.

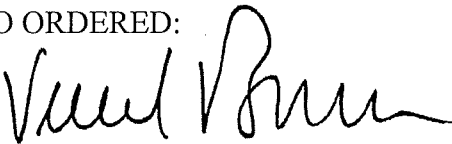
Accordingly, it is HEREBY ORDERED:

1. Plaintiff's motion is GRANTED IN PART and DENIED IN PART.
2. Judgment is entered against Defendants 303 Restaurant LLC and Hovorka Hospitalities Piermont LLC, d/b/a/ The Whiskey Kitchen, in the total amount of \$16,099.37, comprising: (A) compensatory damages for unpaid minimum and overtime wages in the amount of \$2,931.50; (B) statutory damages for violation of New York Labor Law § 195(1) in the amount of \$5,000; (C) statutory damages for violation of New York Labor Law § 195(3) in the amount of \$5,000; (D) liquidated damages in the amount of \$2,931.50; and (E) prejudgment interest in the amount of \$236.37.
3. Plaintiff is awarded attorney's fees in the amount of \$2432.50, and costs in the amount of \$540.00.
4. Plaintiff is awarded post-judgment interest, as calculated under 28 U.S.C. § 1961.
5. Pursuant to New York Labor Law § 198(4) if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

The Clerk is directed to terminate the pending motion (Doc. #23) and close this case.

Dated: October 8, 2020
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge